IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 26TH FEBRUARY 2007 / 7TH PHALGUNA 1928

MFA.No. 608 of 2000()

OPMV.270/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, IRINJALAKUDA
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APPELLANT:PETITIONER

THANKAMANI, W/O.KUMARAN,
PUTHENVEEDU HOUSE,
MOTHIRAKANNI DESOM & P.O.
PARIYARAM VILLAGE,
MUKUNDAPURAM TALUK.

BY ADV. SRI.P.V.BABY
SRI.A.N.SANTHOSH

RESPONDENTS:RESPONDENTS
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1. P.V.ANTONY, S/O.VAREED,
PAREKKADAN HOUSE,
VETTUKADAVU VIA.
CHALAKUDY.

***2. K.T.ANTOO, C/O.P.V.ANTONY,**
PAREKKADAN HOUSE,
VETTUKADAVU VIA,
CHALAKUDY.(DELETED)*

3. THE UNITED INDIA INSURANCE CO. LTD.,
SOUTH JUNCTION, CHALAKUDY.

(*)THE NAME OF THE SECOND RESPONDENT IS DELETED FROM PARTY ARRAY AT THE RISK OF THE APPELLANT VIDE ORDER DATED 2.2.2007 ON M.F.A.

BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL, SC FOR R3

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 26/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.Raman & Antony Dominic, JJ.
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M.F.A.No.608 of 2000
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Dated this the 26th day of February, 2007.

JUDGMENT

Raman,J.

Appellant was a passenger in a private bus bearing registration No.KEF 417, which was insured with the third respondent. On 23.12.1995 at about 8 a.m. while the appellant was alighting from the bus, she fell down and the back wheel of the bus run over her left leg and sustained very serious injuries as noticed by the Tribunal in paragraph 9, which is as follows:

> "(1) Severe crush injury left leg below knee.
> (2) Compound fracture lower third of left leg-
> muscle exposed – tendons and blood vessels are cut.
> (3) Abrasions all over body.
> (4) Crush injury right ankle.
> (5) Crush injury with fracture left middle finger, right hand
> palm and fingers, injury left hand and face – loss of
> teeth."

Thereafter, the appellant was treated in St.James Hospital, Chalakudy and from there in the Medical College Hospital, Thrissur.

2. It has come out in evidence that as a result of the accident,

the appellant is unable to do any work. As a matter of fact, the Tribunal itself found on an examination that the appellant is unable to stand before court. Ext.A7 certificate produced originally in the case shows that the appellant suffered 53% permanent disability as a result of the accident. Subsequently, the appellant was got examined by a Medical Board as per a direction of this Court in O.P.No.4456 of 1999. Ext.X1 certificate issued by the Medical Board shows that the disability suffered by the appellant is 55%. The Tribunal has in the circumstances fixed the percentage of disability at 55% rightly and compensation towards permanent disability was awarded taking 16 as a multiplier. An amount of Rs.1,32,000/- was awarded towards permanent disability. The income of the appellant was fixed at Rs.1,250/-. In this regard, the appellant produced Ext.A8 certificate issued by the Secretary of Building Workers Union in which the appellant was a member for the past several years. It shows that the appellant was a concrete worker and her daily wage was certified to be Rs.150/- per day. The Tribunal did not believe this piece of evidence and fixed the monthly income at Rs.1,250/-, which applies to a case where no evidence is tendered. In this case, since there is some evidence regarding the income of the appellant and considering the fact that the appellant was a concrete worker, we think, it would be

just and reasonable to fix the income at Rs.2,400/- per month. If so, the compensation for permanent disability will work out to Rs.2,53,440/-. Since the appellant was already awarded an amount of Rs.1,32,000/-, the appellant will be entitled for a further amount of Rs.1,21,440/- as compensation under this head. Likewise, compensation towards loss of earning, the appellant will be entitled for an additional amount of Rs.6,900/- taking the income as Rs.2,400/-.

3. In the result, the award is modified. The appellant will be entitled to an additional amount of Rs.1,28,340/- with interest at the rate of 7% per annum from the date of petition till realisatioin over and above the compensation already awarded by the Tribunal. Appeal is allowed as above. No costs.

P.R.Raman,
Judge.

Antony Dominic
Judge.

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